

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
AT WHEELING**

<b>MINDI LEE KRESYMAN,</b>	)	<b>CASE NO.: 5:20-CV-96</b>
	)	
<b>Plaintiffs,</b>	)	<b>JUDGE: Bailey</b>
	)	
<b>v.</b>	)	
	)	
<b>LOWE’S HOME CENTERS, LLC,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	
	)	
	)	

**DEFENDANT LOWE’S HOME CENTERS, LLC’S MOTION TO DISMISS**

Defendant, Lowe’s Home Centers, LLC, by counsel, moves this Court to dismiss Plaintiff’s Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. This Court should dismiss Plaintiff’s Complaint because it fails to state a claim upon which relief may be granted. Specifically, Plaintiff’s Complaint fails to set forth a claim under which Lowe’s owed her a duty of care. Plaintiff’s Complaint sounds in negligence, yet involves actions taken by herself and through no fault of Lowe’s. No action for negligence can prevail without a duty broken. Thus, Plaintiff’s Complaint must be dismissed.

A memorandum of law in support of this motion is submitted herewith.

WHEREFORE, Defendant Lowe’s Home Centers, LLC respectfully requests that this Court grant its motion to dismiss and enter an order dismissing Plaintiff’s Complaint with prejudice.

Respectfully submitted this 18th day of May, 2020.

/s Elizabeth L. Stryker

Monté L. Williams, Esq. (WV Bar #9526)  
Elizabeth L. Stryker, Esq. (WV Bar #13270)  
Steptoe & Johnson PLLC  
P.O. Box 1616  
Morgantown, WV 26507-1616  
Phone: 304-598-8000  
monte.williams@steptoe-johnson.com  
liz.stryker@steptoe-johnson.com  
Counsel for Lowe's Home Centers, LLC

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
AT WHEELING**

<b>MINDI LEE KRESYMAN,</b>	)	<b>CASE NO.: 5:20-cv-96</b>
	)	
<b>Plaintiffs,</b>	)	<b>JUDGE: Bailey</b>
	)	
<b>v.</b>	)	
	)	
<b>LOWE’S HOME CENTERS, LLC,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	
	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2020, I electronically filed the foregoing “***Defendant Lowe’s Home Centers, LLC’s Motion To Dismiss***” with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record, provided they are CM/ECF participants:

Ronald W. Zavolta, Esquire  
Paul Ratcliffe, Esquire  
Zavolta Law Offices  
741 Fairmont Pike  
Wheeling, WV 26003  
*Counsel for Plaintiff*

/s/ **Elizabeth L. Stryker**  
Monté L. Williams, Esq. (WV Bar #9526)  
Elizabeth L. Stryker, Esq. (WV Bar # 13270)  
R. Mitch Moore, Esq. (WV Bar #13659)  
Steptoe & Johnson PLLC  
P.O. Box 1616  
Morgantown, WV 26507-1616  
Phone: 304-598-8000  
monte.williams@steptoe-johnson.com  
liz.stryker@steptoe-johnson.com  
*Counsel for Lowe’s Home Centers, LLC*